



## **TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-EIGHTH LEGISLATURE, 2015**

---

**ON THE FOLLOWING MEASURE:**

S.B. NO. 1028, S.D. 2, RELATING TO THE HAWAII HEALTH CONNECTOR.

**BEFORE THE:**

HOUSE COMMITTEES ON HEALTH AND ON CONSUMER PROTECTION AND  
COMMERCE

**DATE:** Monday, March 23, 2015

**TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** Douglas S. Chin, Attorney General, or  
Lili A. Young, Deputy Attorney General

---

Chairs Au Belatti and McKelvey and Members of the Committees:

The Department of the Attorney General raises the following issues.

This measure, in part, tries to align state law with certain provisions of the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010 (ACA), by establishing certification criteria for health plan issuers for implementation by the State's health insurance exchange known as the Hawaii Health Connector (Connector), by amending chapter 435H, Hawaii Revised Statutes (HRS). This bill also amends section 328L-3, HRS, to appropriate funds from the emergency budget and reserve fund to guarantee the debentures to be issued by the Hawaii Health Connector (Connector).

Section 2, on page 5, lines 8-20, through page 6, lines 1-6, amends chapter 435H, HRS, by adding a new section that requires a health plan issuer to offer to contract with any willing federally qualified health center (FQHC) for a provision of services, and requires the issuer to reimburse the FQHC at Medicaid rates pursuant to the Social Security Act section 1902(bb) [42 U.S.C. section 1396a], as a condition of certification by the Insurance Commissioner.

ACA section 1311(d)(4) requires that the Connector implement procedures for certification consistent with guidelines developed by the U.S. Secretary of Health and Human Services (Secretary). Pursuant to ACA section 1311(c), the Secretary is responsible for establishing, via regulations, minimum criteria for the certification of health plans as qualified health plans (QHP). The minimum certification standards are found at 45 C.F.R. part 156, subpart C, and state that "[i]n order to participate in an Exchange, a health insurance issuer must have in effect a certification issued or recognized by the Exchange to demonstrate that each

health plan it offers in the Exchange is a QHP.” 42 C.F.R. §156.200(a). This provision requires the Connector to certify a plan as being a QHP, but the amendment makes it a condition of certification by the Insurance Commissioner, which is inconsistent with the federal law.

Further, the certification standards require that a health plan issuer's provider network include essential community providers. FQHCs fall within this category of listed providers.

In relevant part 45 C.F.R. section 156.235 provides:

(a) *General requirement.* (1) A QHP issuer must have a sufficient number and geographic distribution of essential community providers, where available, to ensure reasonable and timely access to a broad range of such providers for low-income, medically underserved individuals in the QHP's service area, in accordance with the Exchange's network adequacy standards.

....

(d) *Payment rates.* Nothing in paragraph (a) of this section shall be construed to require a QHP issuer to contract with an essential community provider if such provider refuses to accept the generally applicable payment rates of such issuer.

(e) *Payment of federally-qualified health centers.* If an item or service covered by a QHP is provided by a federally-qualified health center (as defined in section 1905(l)(2)(B) of the Act) to an enrollee of a QHP, the QHP issuer must pay the federally-qualified health center for the item or service an amount that is not less than the amount of payment that would have been paid to the center under section 1902(bb) of the Act for such item or service. Nothing in this paragraph (e) would preclude a QHP issuer and federally-qualified health center from mutually agreeing upon payment rates other than those that would have been paid to the center under section 1902(bb) of the Act, as long as such mutually agreed upon rates are at least equal to the generally applicable payment rates of the issuer indicated in paragraph (d) of this section.

As worded, it appears that this bill establishes criteria for certification of a qualified health plan that do not allow the flexibility for a health plan issuer to choose which FQHC it could offer to contract with, or to negotiate and mutually agree upon rates other than the Medicaid reimbursement rate, inconsistent with the federal law.

Any criteria established should include a provision that these amendments do not affect the rights and duties of parties for contracts or agreements already in existence prior to the effective date of this Act, and include wording that any criteria established shall be in compliance with federal law.

Section 4 on page 6, lines 16-19, and on page 7, lines 1-18, amends section 328L-3(d), HRS, by adding a new paragraph (4) to allow the Legislature to appropriate money from the emergency budget and reserve fund to guarantee, approve, and oversee the issuance of

debentures by the Connector. Section 328L-3, HRS, is slated for repeal and reenactment on June 30, 2015, pursuant to Act 119, Session Laws of Hawaii 2009, as amended by Act 138, Session Laws of Hawaii 2010, sections 1, 2, and 4. Specific to this measure, the version of section 328L-3(d), HRS, that existed on June 30, 2009, will be reenacted and does not include the new wording proposed in this measure. Therefore, it is necessary for this measure to be effective on or after July 1, 2015, so the amendments to section 328L-3(d), HRS, survive the repeal and reenactment on June 30, 2015.

We respectfully request that this Committee consider our comments.



DAVID Y. IGE  
GOVERNOR  
  
SHAN S. TSUTSUI  
LT. GOVERNOR

**STATE OF HAWAII**  
**OFFICE OF THE DIRECTOR**  
**DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**  
335 MERCHANT STREET, ROOM 310  
P.O. Box 541  
HONOLULU, HAWAII 96809  
Phone Number: 586-2850  
Fax Number: 586-2856  
[www.hawaii.gov/dcca](http://www.hawaii.gov/dcca)

CATHERINE P. AWAKUNI COLÓN  
DIRECTOR  
  
JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

**TO THE HOUSE COMMITTEES ON HEALTH AND  
CONSUMER PROTECTION AND COMMERCE**

**TWENTY-EIGHTH LEGISLATURE**  
**Regular Session of 2015**

**Monday, March 23, 2015**  
**2:00 p.m.**

**TESTIMONY ON SENATE BILL NO. 1028, S.D. 2 – RELATING TO THE HAWAII  
HEALTH CONNECTOR.**

**TO THE HONORABLE DELLA AU BELATTI AND ANGUS L.K. McKELVEY, CHAIRS,  
AND MEMBERS OF THE COMMITTEES:**

My name is Gordon Ito, State Insurance Commissioner ("Commissioner"),  
testifying on behalf of the Department of Commerce and Consumer Affairs  
("Department"). The Department supports the intent of this bill to provide for other  
revenue options for the Connector, but submits the following comments on this bill.

The purpose of this bill is to: require qualified health plans in the Hawaii Health  
Connector ("Connector") to contract with federally-qualified health centers and utilize  
payment methodology as specified in the federal Social Security Act; retain the current  
financial and service benefits of the Connector; enhance the availability of services  
through the Connector; and assist the Connector by authorizing the State to guarantee  
debentures issued by the Connector.

The Department notes that health insurers are required to conform to the Patient  
Protection and Affordable Care Act ("PPACA"), and the Commissioner has the power to  
enforce the consumer protections and market reforms under the PPACA. Section  
432:1-107, HRS, section 432D-28, HRS, and section 431:10A-105.5, HRS. Under 45

CFR 156.235, qualified health issuers are already required to have essential community providers, the payment of which is set by federal regulation.

Furthermore, the proposed language regarding health centers may be in conflict with federal law under PPACA section 1301 in that the exchange certifies qualified health plans and not the Commissioner. In addition, PPACA Section 1311 and other federal regulations set forth the requirements for the Connector. Finally, the Insurance Division and the Commissioner do not regulate or oversee the contractual provisions or requirements between health insurers and medical providers.

The Department also notes that PPACA Section 1301 defines the term "qualified health plan" and that PPACA Section 1311(d)(2)(B)(i) prohibits an exchange from making available any health plan that is not a qualified health plan.

Given the different potential inconsistencies between this bill's provisions and the PPACA, we would ask the Committees to closely consider the impact of this measure on the State's compliance with the various parts of the PPACA's requirements.

We thank the Committees for the opportunity to present testimony on this matter.

WRITTEN ONLY

TESTIMONY BY WESLEY K. MACHIDA  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE HOUSE COMMITTEES ON HEALTH AND  
CONSUMER PROTECTION & COMMERCE  
ON  
SENATE BILL NO. 1028, S.D.2

March 23, 2015  
2:00 P.M.

RELATING TO THE HAWAII HEALTH CONNECTOR.

Senate Bill No. 1028, S.D.2, among other things, authorizes the State of Hawaii to guarantee debentures issued by the Hawaii Health Connector.

The Department has comments on this bill. Pursuant to Article VII, Section 13 of the Constitution of the State of Hawaii, the State must establish and maintain a reserve in an amount in reasonable proportion to the outstanding loans guaranteed by the State. This reserve needs to be established, funded by Legislative appropriation, and maintained by whoever administers the guarantee. (Historically, the reserve funding levels have been in the 15% to 25% range, depending on the degree of risk.) In addition, loans guaranteed by the State are, under certain conditions, subject to inclusion in the State's Debt Limit and as such, may affect the total amount of general obligation bonds that may be issued to fund State projects/programs.

Furthermore, the Department believes that the more appropriate source of funding for the debenture guarantee is the general fund rather than the Emergency and Budget Reserve Fund (EBRF). The EBRF is the State's "rainy day" fund and its use is limited statutorily to various emergency purposes.

Thank you for the opportunity to provide our testimony on this bill.



**House Committee on Health**

The Hon. Della Au Belatti, Chair

The Hon. Richard P. Creagan, Vice Chair

**House Committee on Consumer Protection & Commerce**

The Hon. Angus L.K. McKelvey, Chair

The Hon. Justin H. Woodson, Vice Chair

**Testimony on Senate Bill 1028 SD 2**

**Relating to the Hawaii Health Connector**

**Submitted by Nani Medeiros, Public Affairs and Policy Director**

**March 23, 2015, 2:00 pm, Room 325**

The Hawaii Primary Care Association (HPCA), which represents the federally qualified community health centers (FQHC) in Hawaii, supports Senate Bill 1028, which calls for a number of measures to strengthen the Hawaii Health Connector.

The HPCA strongly supports section 2 of the bill, which calls for an amendment to HRS §435H to state:

(a) The commissioner shall require that each qualified plan, as a condition of certification, shall:

(1) Offer to any willing federally-qualified health center providing services in geographic areas served by the qualified plan, the opportunity to contract with the qualified plan to provide to the qualified plan's enrollees all ambulatory services that are covered by the qualified plan that the federally-qualified health center offers to provide; and

(2) Reimburse each federally-qualified health center for services as provides in 42 USC §1396a(bb).

This language serves to codify several key factors for community health centers. First, it affirms payment methodology for health centers providing services to qualified health plan enrollees. Second, it protects continuity of care for enrollees, including the 7,500 legal COFA migrants recently removed from the Medicaid program. Finally, it helps to ensure financial sustainability for an essential community provider moving forward.

For these reasons we strongly support this bill and thank you for the opportunity to testify.

creagan1 - Dannah

---

From: mailinglist@capitol.hawaii.gov  
Sent: Friday, March 20, 2015 3:34 PM  
To: HLTtestimony  
Cc: lokelani711@gmail.com  
Subject: Submitted testimony for SB1028 on Mar 23, 2015 14:00PM

**SB1028**

Submitted on: 3/20/2015

Testimony for HLT/CPC on Mar 23, 2015 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Amber Corrales	Individual	Oppose	No

Comments: I do not support the use of the emergency fund in the event that the Connector needs more money. Follow the legislative budgeting process please.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)



March 23, 2015

The Honorable Della Au Belatti, Chair  
House Committee on Health  
The Honorable Angus L.K. McKelvey, Chair  
House Committee on Consumer Protection and Commerce

**Re: SB 1028, SD2 – Relating to Hawaii Health Connector**

Dear Chair Belatti, Chair McKelvey and Members of the Committees:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 1028, SD2, which, among other things, requires a qualified health plan to offer to contract with each federally qualified health center (FQHC), and to reimburse the FQHC at federal Prospective Payment System (PPS) rates. HMSA opposes a portion of this Bill because it raises serious Constitutional concerns, and we take no position of the remainder of the Bill.

Constitutional Concern: Impermissible Interference with Contracts

HMSA opposes the provision in this Bill mandating issuers to offer to contract with any willing FQHC and to reimburse that FQHC at PPS rates. We believe this requirement raises Constitutional concerns. Specifically, this provision is a substantial impairment of an issuer's contract rights under the Contracts Clause of the U.S. Constitution

HMSA has existing contracts with FQHCs that are the product of previous negotiations for services based on mutually agreed upon rates. The essential terms of these contracts include specific financial terms that set forth the reimbursement rates to FQHCs. By requiring HMSA to pay Medicaid PPS rates to FQHCs, SB 1028, SD2, substantially impairs HMSA's Constitutional contract rights by precluding the performance of an essential term of the existing contracts with FQHCs and by attempting to alter a specific financial term.

To address the Constitutional question raised in this Bill, a referral to and review by the House Committee on Judiciary may be appropriate.

Appropriation Required

Reimbursements at the PPS level are higher than our contracted commercial reimbursement level. The provision in this Bill requiring reimbursement to the FQHCs at the PPS level will drive up costs. And, it will require a General Fund appropriation to cover the additional cost that will accrue to the COFA-subsidized plans.

Thank you for the opportunity to testify in opposition to SB 1028 SD2. Your consideration of our concerns is appreciated.

Sincerely,

Mark K. Oto  
Director, Government Relations

Testimony of Phyllis Dendle  
Director, Government Relations

Before:  
House Committee on Health  
The Honorable Della Au Belatti, Chair  
The Honorable Richard P. Creagan, Vice Chair  
and  
House Committee on Consumer Protection & Commerce  
The Honorable Angus L.K. McKelvey, Chair  
The Honorable Justin H. Woodson, Vice Chair

March 23, 2015  
2:00 pm  
Conference Room 325

**Re: SB 1028, SD2 Relating to Hawaii Health Connector**

Chairs, Vice Chairs, and committee members thank you for this opportunity to provide testimony on this bill relating to the Hawaii Health Connector and federally-qualified health centers (FQHC).

**Kaiser Permanente Hawaii opposes this bill.**

While we appreciate the effort to improve the Hawaii Health Connector through legislation there is one element of this bill that we oppose completely. On page 5 starting at line 11 the bill proposed to mandate health plans to contract with “any willing FQHC.”

This testimony is not even suggesting that FQHC do not provide excellent service to their patients and the communities they serve. We know they do and KPHI contracts with some FQHC’s to serve in areas where they are the primary provider of care. We are also working closely with FQHC’s in carefully transitioning COFA patients from Medicaid to the PAP program and care at KPHI.

However, Kaiser Permanente already meets the essential community provider (ECP) requirement through its integrated delivery system under the “alternate standard” approach of the ACA. Additionally, this “any willing FQHC requirement” is inconsistent with the ACA and federal law.

Kaiser Permanente Already Meets the ECP Requirement Through The “Alternate Standard” Approach Under the ACA.

The ACA requires that all “Qualified Health Plans” (QHP) include an “adequate network of primary care providers, specialists, and other ancillary health care providers.” In meeting this “adequate network” standard, QHPs are required to contract with ECPs to service medically underserved areas. However, there is an “alternate standard” for QHPs that “provides a majority of covered professional services through physicians employed by the issuer or through a single contracted medical group.” See 45 C.F.R. §156.235, Essential community providers. To be eligible under this “alternate standard,” a QHP must have a sufficient number and geographic distribution of employed providers and hospital facilities, or providers of its contracted medical group and hospital facilities, to ensure reasonable and timely access for medically underserved areas within the plan’s service area. This “alternate standard” was established based on arguments that a broad-based requirement that health plans contract with all ECPs in a plan’s service area would have a particularly negative impact on integrated delivery systems like Kaiser Permanente. Integrated health systems generally arrange for the appropriate mix of providers and facilities to provide care through a collaborative network of functionally linked providers. Allowing any provider to enter into a plan network interferes with an integrated health plan’s efforts to create provider networks that deliver greater efficiency and higher quality. Therefore, as an integrated delivery system under the “alternate standard” approach, Kaiser Permanente should not be required to contract with any FQHC, which would undermine its efforts to promote quality care for its patients.

This “Any Willing FQHC Requirement” is Inconsistent with the ACA and Federal Law.

It is widely recognized that health insurance carriers have the ability to define and adjust the number, the qualifications and the required quality of performance of providers in their networks. Health insurers also may select the providers in their networks as a means of coordinating care. Conversely, any willing provider laws, which allow any doctor, hospital, pharmacy, or FQHC to enter into a plan network, directly undermine health plans’ efforts to promote quality, affordable care for consumers, by interfering with health plans’ ability to effectively negotiate on behalf of consumers and to select the most effective and efficient health care providers.

Under the ACA’s non-discrimination provision prohibiting health plans from discrimination against any health care provider acting within the scope of that provider’s license, the ACA specifically included an “all willing provider” exclusion to ensure that insurers are not required to accept every qualified provider into its network provision:

SEC. 2706. NON-DISCRIMINATION IN HEALTH CARE.

(a) PROVIDERS.—A group health plan and a health insurance issuer offering group or individual health insurance coverage shall not discriminate with respect to participation under the plan or coverage against any health care provider who is acting within the scope of that provider’s license or certification under applicable State law. **This section shall not require that a group health plan or health insurance issuer contract with any health care**

**provider willing to abide by the terms and conditions for participation established by the plan or issuer.** (Emphasis added)

Clearly, the ACA does not require health plans to admit any willing provider to their networks. Moreover, the “any willing provider” requirement also contradicts the goal of the ACA to decrease health care spending and lower health care insurance premiums. Health plans can negotiate better prices with these in-network providers; and the lower prices with providers translate into lower premiums for consumers. However, allowing any willing FQHP in health plans’ provider networks will make it difficult for health plans to negotiate affordable prices. Thus, this imposition of “any willing FQHC requirement” could lead to higher health care prices, which translate into higher premiums for consumers.

Additionally, this “any willing FQHP requirement” also appears to be in conflict with the constitutional prohibition against a state interfering with contractual rights. The Contract Clause of the U.S. Constitution prohibits states from enacting any law that retroactively impairs contract rights. All health plans should have the flexibility to choose which provider to contract with, at a mutually agreeable rate, to ensure the delivery of high-value care in the best interest of the members.

We urge you to either hold this bill or remove this section which would require health plans to contract with any willing FQHC. Thank you for your consideration.



**HAWAI'I LODGING & TOURISM**  
**A S S O C I A T I O N**

Testimony of George Szigeti  
President & CEO  
HAWAI'I LODGING & TOURISM ASSOCIATION  
House Committees HLT/CPC  
Hearing on March 23, 2015, 2:00 p.m.  
SB 1028 SD 2 Relating to the Hawai'i Health Connector

Dear Chairs, Vice Chairs, and Members of the Committees. My name is George Szigeti and I am the President and CEO of the Hawai'i Lodging & Tourism Association.

The Hawai'i Lodging & Tourism Association (HLTA) is a statewide association of hotels, condominiums, timeshare companies, management firms, suppliers, and other related firms that benefit from and strengthen Hawai'i's visitor industry. Our membership includes over 150 lodging properties, representing over 50,000 rooms, and over 400 other Allied members. The visitor industry was responsible for generating \$14.9 billion in visitor spending in 2014 and supported 170,000 jobs statewide – we represent one of Hawai'i's largest industries and a critical sector of the economy.

On behalf of HLTA, permit me to offer this testimony regarding SB 1028 SD 2 relating to the Hawai'i Health Connector which aligns state law with certain provisions of the Affordable Care Act by requiring qualified health plans in the connector to contract with federally-qualified health centers and utilize payment methodology as specified in the federal Social Security Act. Retains current financial and service benefits of the Hawaii health connector. Enhances the availability of services through the connector. Authorizes the State of Hawaii to guarantee debentures issued by the connector. Specifies that the Director of Finance, pursuant to an act of the Legislature, may use the emergency and budget reserve fund to guarantee, approve, and oversee the issuance of the debentures by the connector.

The Hawai'i Lodging and Tourism Association **opposes** SB 1028 SD 2. We understand the need for the Health Connector to derive other sources of revenue. However, as we read the bill, it appears that the Connector can now function as a third party benefits administrator. If this is the intent, we are opposed to having a government created, government funded organization, now able to compete against other private companies. This would place the Connector at an advantage over other private sector companies.

We respectfully ask that this provision be removed or the bill be deferred.

Thank you for this opportunity to testify.



**Testimony to the House Committee on Health and Committee on Consumer  
Protection & Commerce  
Monday, March 23, 2015 at 2:00 P.M.  
Conference Room 325, State Capitol**

**RE: SENATE BILL 1028 SD2 RELATING TO THE HAWAII HEALTH  
CONNECTOR**

Chairs Belatti and McKelvey, Vice Chairs Creagan and Woodson, and Members of the Committees:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** SB 1028 SD2, which among other things enhance the availability of services through the connector.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

We understand the need for the Health Connector to derive other sources of revenue. However, as we read the bill, it appears that the Connector can now function as a third party benefits administrator. If this is the intent, we are opposed to having a government created, government funded organization, now able to compete against other private companies. This places the Connector at an advantage over other private sector companies.

We ask that this provision be removed or the bill be deferred.

Thank you for the opportunity to testify.



HEARING BEFORE THE HOUSE COMMITTEE ON HEALTH AND  
THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

**TESTIMONY IN OPPOSITION OF SB1028 SD2 RELATING TO THE HAWAII HEALTH CONNECTOR**

Hawaii State Capitol,  
Conference Room 325  
March 23, 2015  
2:00 PM

Chairs Belatti and McKelvey, Vice Chairs Creagan and Woodson, and Members of the Committees:

The Maui Chamber of Commerce **opposes** SB 1028 SD2 which, among other things, enhances the availability of services through the connector.

The Maui Chamber of Commerce believes in creating a strong economic environment that supports job growth while also protecting our environment and preserving our quality of life. We have approximately 500 members, 95% of whom are small businesses with 25 or fewer employees.

We understand the need for the Health Connector to derive other sources of revenue. However, as we read the bill, it appears that the Connector can now function as a third party benefits administrator. If this is the intent, we are opposed to having a government created and government funded organization, which would be able to compete against other private companies. This places the Connector at an advantage over private sector companies.

We ask that this provision be removed or the bill be deferred.

Thank you for the opportunity to testify.

Sincerely,

Pamela Tumpap  
President